

Senate Bill No. 315

Passed the Senate August 22, 2014

Secretary of the Senate

Passed the Assembly August 14, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 7011.4, 7027.2, 7028, and 7110.5 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 315, Lieu. Contractors.

(1) The Contractors' State License Law provides for the licensure and regulation of contractors by the Contractors' State License Board within the Department of Consumer Affairs. The act establishes an enforcement division within the board that is required to enforce prohibitions against all forms of unlicensed activity, as specified. The act authorizes persons employed as enforcement representatives in the division and designated by the Director of Consumer Affairs to issue written notices to appear in court, as specified.

This bill would additionally require that the enforcement division, when participating in the activities of the Joint Enforcement Strike Force on the Underground Economy, be granted free access to all places of labor. The bill would make other technical, nonsubstantive changes to these provisions.

(2) The act makes it a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state without having a license, unless particularly exempted.

This bill would instead provide that, unless exempted, it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state if the person is not licensed in accordance with the act, or if the person performs acts covered by the act under a license that is under suspension for specified violations.

(3) The act provides that it is a misdemeanor for any person to advertise for construction or work of improvement unless that person holds a valid license in the classification so advertised, except as specified. However, the act authorizes a person who is not licensed as a contractor to advertise for construction work or work of improvement if he or she states in the advertisement that he or she is not licensed, as specified. The act also exempts from its application any work or operation on one undertaking or project

by one or more contracts if the aggregate contract price for labor, materials, and all other items is less than \$500, and the work or operations are casual, minor, or inconsequential.

This bill would authorize a person who is not licensed as a contractor to advertise for construction work or a work of improvement only if the aggregate contract price is less than \$500 and the person states in the advertisement that he or she is not licensed. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(4) The act authorizes the board to appoint a registrar of contractors. Existing law requires the registrar to initiate disciplinary action against a licensee within 30 days of notification by the Labor Commissioner of a finding of a willful or deliberate violation of the Labor Code.

This bill would instead require the registrar to initiate disciplinary action against a licensee within 180 days of notification by the Labor Commissioner.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 7011.4 of the Business and Professions Code is amended to read:

7011.4. (a) Notwithstanding Section 7011, there is in the Contractors' State License Board, a separate enforcement division that shall rigorously enforce this chapter prohibiting all forms of unlicensed activity.

(b) Persons employed as enforcement representatives of the Contractors' State License Board and designated by the Director of Consumer Affairs shall have the authority to issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. An employee so designated is not a peace officer and is not entitled to safety member retirement benefits as a result of that designation. He or she does not have the power of arrest.

(c) When participating in the activities of the Joint Enforcement Strike Force on the Underground Economy pursuant to Section 329 of the Unemployment Insurance Code, the enforcement division shall have free access to all places of labor.

SEC. 2. Section 7027.2 of the Business and Professions Code is amended to read:

7027.2. Notwithstanding any other provision of this chapter, a person who is not licensed pursuant to this chapter may advertise for construction work or a work of improvement covered by this chapter only if the aggregate contract price for labor, material, and all other items on a project or undertaking is less than five hundred dollars (\$500), and he or she states in the advertisement that he or she is not licensed under this chapter.

SEC. 3. Section 7028 of the Business and Professions Code is amended to read:

7028. (a) Unless exempted from this chapter, it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state under either of the following conditions:

(1) The person is not licensed in accordance with this chapter.

(2) The person performs acts covered by this chapter under a license that is under suspension for failure to pay a civil penalty or to comply with an order of correction, pursuant to Section 7090.1, or for failure to resolve all outstanding final liabilities, pursuant to Section 7145.5.

(b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(c) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (d) are applicable, the court shall impose a fine of 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed person, or five thousand dollars (\$5,000), whichever is greater, and, unless the sentence prescribed in subdivision (d) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or

subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(d) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than five thousand dollars (\$5,000) nor more than the greater amount of ten thousand dollars (\$10,000) or 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed person, and by imprisonment in a county jail for not more than one year or less than 90 days. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.

(e) A person who violates this section is subject to the penalties prescribed in subdivision (d) if the person was named on a license that was previously revoked and, either in fact or under law, was held responsible for any act or omission resulting in the revocation.

(f) If the unlicensed person engaging in the business of or acting in the capacity of a contractor has agreed to furnish materials and labor on an hourly basis, “the contract price” for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(g) Notwithstanding any other law, an indictment for any violation of this section by an unlicensed person shall be found, or information or a complaint shall be filed, within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

(h) For any conviction under this section, a person who utilized the services of the unlicensed person is a victim of crime and is eligible, pursuant to subdivision (f) of Section 1202.4 of the Penal Code, for restitution for economic losses, regardless of whether he or she had knowledge that the person was unlicensed.

(i) The changes made to this section by the act adding this subdivision are declaratory of existing law.

SEC. 4. Section 7110.5 of the Business and Professions Code is amended to read:

7110.5. Upon receipt of a certified copy of the Labor Commissioner’s finding of a willful or deliberate violation of the Labor Code by a licensee, pursuant to Section 98.9 of the Labor Code, the registrar shall initiate disciplinary action against the licensee within 180 days of notification.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2014

Governor